Practical and prudent action is often a better option than strict legality

The tabling of the Public Investment Bill before the parliamentary portfolio committee at the beginning of August elicited much reaction from organised labour. **Fedusa** outlines its position regarding the bill, which led to an exchange of some rather harsh words between the departments of finance and organised labour.

There has been much discussion and excitement within organised labour around government's proposed Public Investment Bill – not without good cause, although the reasons various federations had for opposing the bill differed to a degree. What was common to both Fedusa and Cosatu's position was that the bill appeared to be pushed hurriedly through the parliamentary process without any attempt at engaging with the representative bodies of the workers who would be directly affected by it – those who work in the Public Service and belong to the Government Employees Pension Fund (GEPF).

The fact that the federations jointly represent more than 700 000 workers in the public sector alone was just cause for their very vocal protests in their submissions to the portfolio committee. Government, however, says it had no legal obligation to send this legislation through any of the employee forums or even to Nedlac, as it was not a matter that had any significant socio-economic impact – a stance that is criticised by labour. Surely it would have been more conducive to building relationships with stakeholders to engage with organised labour in a practical and prudent manner, than to take a hard stance based on what government 'must' do, as opposed to what it 'should' do.

There may or may not be merit in government's stance that the legislation did not 'need' to be subjected to the Nedlac process when it applies only to one sector. However, Fedusa certainly believes that this practical action would have yielded a far better end product. It must also be questioned why the concept and policy behind the legislation was not even tabled with the Public Service Central Bargaining Chamber (PSCBC).

In its submission to the portfolio committee, Fedusa raised the following pertinent questions:

- What is the purpose of the corporatisation of the Public Investment Commissioners (PIC)?
- How will this benefit the members of the GEPF?
- Why are the soon to be appointed GEPF trustees not been involved in this process?

The Board of the GEPF has not been formally constituted and the Minister of Finance acts in its capacity even though the Government Employees Pension Law of 1996 expressly stipulates that the fund *must* be managed by an elected board of equal representatives. Furthermore, at present all returns on investment with the PIC are for the benefit of the GEPF. It is now proposed in the bill that the newly formed Public Investment *Corporation* be placed in a position to pay dividends to the state as shareholder, a move that could be disadvantageous to the GEPF and its members. It is essential, before any investment is made and such dividends are payable to the state, that a proper service level agreement is put in place in consultation with the GEPF trustees.

Government has conceded that, as was raised by Fedusa, the Minister of Finance will face a serious conflict of interests if the bill goes forward as it is, as he would be the sole Trustee and shareholder of the fund, in addition to being responsible for operating the PIC Board.

It was subsequently acknowledged at the meeting of the portfolio committee, which was attended by Fedusa general secretary, Chez Milani, that the GEPF trustees must be appointed before the process goes forward. However, if this doesn't happen, Fedusa has made it clear that it reserves the right to consider legal action against the state to protect its member's interests.

It seems the current bill is highly contentious, and that the way forward for government will be a very rocky one. It should perhaps consider this a learning curve, withdraw the bill, and send it back to either the PSCBC or Nedlac, or preferably both. Neither of the two trade union federations is prepared to back down on this matter and this course of action seems the only way for government to avert a showdown with organised labour. LB